



1 (“Plaintiff”) initiated an action against Michael J. Astrue,<sup>1</sup> Commissioner of Social Security, for  
 2 relief from the Commissioner’s decision denying her application for benefits on April 18, 2011.  
 3 The Parties ultimately stipulated to remand to the agency for a new hearing and decision before an  
 4 Administrative Law Judge (“ALJ”). On remand, the ALJ granted Plaintiff’s application for  
 5 benefits, entitling her to receive approximately \$112,657.00 in retroactive, Title II benefits.  
 6 Counsel now moves for an Order awarding \$20,000 in attorneys fees from those past-due benefits  
 7 pursuant to the contingency fee agreement Counsel entered into with Plaintiff.<sup>2</sup> Counsel has also  
 8 indicated that he will also file a petition for fees pursuant to 42 U.S.C. § 406(a) for representation  
 9 at the agency level, but will not seek total fees in excess of 25%. (#32, at 8.)

10 Due to the stipulation to remand, Counsel’s representation before this Court was  
 11 minimal. Counsel assisted Plaintiff in initiating the suit, stipulated to extensions of time, and  
 12 ultimately, stipulated to the remand. The Court never heard substantive argument or addressed the  
 13 merits of Plaintiff’s case. In total, Counsel, together with another lawyer and two paralegals,  
 14 expended 17.7 hours representing Plaintiff before this Court. (#32-5.)

## 15 DISCUSSION

### 16 I. Legal Standard

17 Under 42 U.S.C. § 406(b)(1)(A), “[w]hen a court renders a judgment favorable  
 18 to a claimant . . . who was represented before the court by an attorney, the court may determine  
 19 and allow as part of its judgment a reasonable fee for such representation, not in excess of 25% of  
 20 the total of the past-due benefits to which the claimant is entitled by reason of such judgment.” A  
 21 district court may also award attorney’s fees “when the district court remands the case to the  
 22 S.S.A. for further proceedings and, following remand, the claimant is subsequently awarded past-  
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24 <sup>1</sup> Michael J. Astrue has been substituted by Carolyn W. Colvin, who was appointed  
 Acting Commissioner of Social Security on February 14, 2013.

25 <sup>2</sup> Under the contingency agreement, Plaintiff and counsel agreed that counsel would  
 26 take 25% of any award of past-due benefits. Counsel’s request of \$20,000 represents only  
 17.75%.

1 due benefits.” *Garcia v. Astrue*, 500 F. Supp. 2d 1239, 1243 (C.D. Cal. 2007) (summarizing the  
 2 law in various circuits and noting the Ninth Circuit’s general assumption of the same rule).  
 3 However, the district court can only award fees for representation before the court; it does not have  
 4 authority to award fees for representation before the Social Security Administration. *Clark v.*  
 5 *Astrue*, 529 F.3d 1211, 1215 (9th Cir. 2008) (citing *MacDonald v. Weinberger*, 512 F.2d 144, 146  
 6 (9th Cir. 1975)).

7           Where a successful plaintiff is represented by an attorney pursuant to a contingency  
 8 fee agreement, the court’s purview over attorneys fees under § 406(b) does not displace that  
 9 agreement, but does impose a duty on the court to provide “an independent check” to assure that  
 10 the agreement will “yield reasonable results in particular cases.” *Gisbrecht v. Barnhart*, 535 U.S.  
 11 789, 807 (2002). In evaluating the reasonableness of a contingency fee agreement, a court must  
 12 consider “the character of the representation and the results the representative achieved.” *Id.* at  
 13 808. A district court properly looks “first to the contingent-fee agreement, then test[s] that  
 14 agreement for reasonableness.” *Id.* The question in this analysis is whether the amount under the  
 15 agreement should be reduced, “not whether the lodestar amount should be enhanced.” *Crawford*  
 16 *v. Astrue*, 586 F.3d 1142, 1149 (9th Cir. 2009). Nonetheless, in determining the necessity of  
 17 reduction, a district court may consider the lodestar amount “as an aid in assessing the  
 18 reasonableness of the fee.” *Gisbrecht*, 535 U.S. at 808. District courts “may properly reduce the  
 19 fee under the contingency agreement for substandard performance, delay, or benefits that are not in  
 20 proportion to the time spent on the case.” *Id.* at 1151 (citing *Gisbrecht*, 535 U.S. at 808).

## 21           **II. Analysis**

22           In assessing the character of Counsel’s representation before this Court, the Court  
 23 does not find that it is the appropriate adjudicatory body to award attorney’s fees. Congress  
 24 provided two mechanisms for attorneys to receive compensation for their services in social  
 25 security cases. First, attorneys may request fees under 42 U.S.C. § 406(a) for representation at the  
 26 agency level. Second, attorneys may request fees under 42 U.S.C. § 406(b) for representation

1 before a court. This bifurcation does not mean that an attorney must petition only the adjudicatory  
2 body that ultimately awarded the past-due benefits for attorney fees, *see Garcia*, 500 F. Supp. 2d at  
3 1244 (granting attorney's fees from the Commissioner's award of past-due benefits after remand),  
4 but each adjudicatory body may only award attorney's fees for the representation that took place  
5 before it alone, *see Clark*, 512 F.2d at 146. Thus, where all the significant argument and  
6 determination takes place before the Commissioner and the court never addresses the merits of a  
7 particular case, the court may properly deny attorneys fees under § 406(b), requiring the attorney to  
8 request attorney's fees under § 406(a) from the Commissioner. *See MacDonald*, 512 F.2d at 147;  
9 *see also Contreras v. Barnhart*, 79 Fed. Appx. 708, 708 (5th Cir. 2003) (holding attorney fee  
10 award under 406(b) was properly denied when the attorney's representation before the court "did  
11 nothing more than to keep [the] case alive").

12           Accordingly, the more appropriate mechanism for Counsel's request is under §  
13 406(a). The nature of Counsel's performance before this Court was simply procedural. Moreover,  
14 the results achieved by Counsel before this Court are neutral as the merits of Plaintiff's case were  
15 never argued to or considered by the Court before the stipulated remand. Counsel correctly states  
16 that an order remanding a case back to the Administration for further proceedings can be a  
17 "judgment favorable to a claimant." *See, e.g., Garcia*, 500 F. Supp. 2d at 1243. However, in the  
18 cases awarding attorneys fees after remand, the court dealt with at least some substantive matters.  
19 *See, e.g., Id.* at 1240-41; *Hearn v. Barnhart*, 262 F. Supp. 2d 1033, 1034 (N.D. Cal. 2003);  
20 *Cantrell v. Astrue*, 639 F. Supp. 2d 1033, 1035 (N.D. Cal. 2009). Here, the merits of Plaintiff's  
21 case were never reached; the Court merely approved the Parties' stipulation.

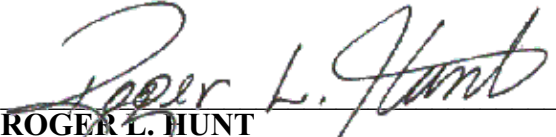
22           Moreover, the Commissioner is best situated to make the reasonableness  
23 determination. All substantive argument and decision took place before the Commissioner.  
24 Consequently, the Commissioner can assess the quality of Counsel's representation and determine  
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1 whether it is commensurate with the desired fee.<sup>3</sup> Counsel's Motion is denied; Counsel may seek  
2 an award of attorney's fees from the Commissioner pursuant to 42 U.S.C. § 406(a).

3 **CONCLUSION**

4 IT IS THEREFORE ORDERED that Plaintiff Sandra E. LaBoy's Counsel's Notice  
5 of Motion and Motion for Attorney Fees Pursuant to 42 U.S.C. § 406(b) is DENIED.

6 Dated: January 8, 2014.

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9 **ROGER L. HUNT**  
10 **United States District Judge**

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25 <sup>3</sup> As the 25% contingency fee in this case exceeds the statutory maximum for automatic  
26 approval of the agreement under 42 U.S.C. § 406(a)(2)(A), the amount constituting reasonable  
attorney's fees is in the discretion of the Commissioner and in accordance with the rules and  
regulations established by the Commissioner pursuant to 42 U.S.C. § 406(a)(1). This Order  
expresses no opinion as to what amount of fees is reasonable.